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Oceans and the law of the sea

Letter dated 3 November 2010 from the Permanent Representative of Costa Rica to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith a copy of the following documents (see annex), both dated 1 November 2010:

- Note DM-429-10 from the Minister for Foreign Affairs of Costa Rica, H.E. Mr. René Castro Salazar, to his Nicaraguan counterpart, H.E. Mr. Samuel Santos López, in response to note MRE/DVM/AJST/660/10/10 of 26 October 2010, signed by the Deputy Minister for Foreign Affairs of Nicaragua, H.E. Mr. Manuel Coronel Kautz.
- Note DM-430-10 from the Minister for Foreign Affairs of Costa Rica, H.E. Mr. René Castro Salazar, to his Nicaraguan counterpart, H.E. Mr. Samuel Santos López, protesting the serious and unacceptable violation of our country's territorial integrity and sovereignty by units of the Nicaraguan Army.

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The actions to which both communications refer were reported and duly substantiated today by the Minister for Foreign Affairs, Mr. Castro Salazar, in the Permanent Council of the Organization of American States (OAS).

I should be grateful if you would have both notes circulated as official documents of the General Assembly under agenda items 10, 15, 18, 24, 25, 33, 42, 70 and 74.

(*Signed*) Eduardo **Ulibarri**
Permanent Representative

Annex to the letter dated 3 November 2010 from the Permanent Representative of Costa Rica to the United Nations addressed to the Secretary-General

Minister for Foreign Affairs and Worship

1 November 2010
DM-429-10

His Excellency Mr. Samuel Santos López
Minister for Foreign Affairs
Republic of Nicaragua

I have the honour to refer to note MRE/DVM/AJST/660/10/10 of 26 October 2010, signed by the Deputy Minister for Foreign Affairs, Mr. Manuel Coronel Kautz, in which the Government of Nicaragua responded to the protest lodged by Costa Rica concerning the actions taken by Mr. Edén Pastora Gómez in the area of Finca Aragón, Isla Calero, Province of Limón. As stated by Costa Rica in its note DM-412-10 of 21 October 2010, these actions, related to the dredging operations in the San Juan River, resulted in a violation of territorial sovereignty and environmental damage on Costa Rican soil, all of which has been duly documented and substantiated.

With regard to the contents of note MRE/DVM/AJST/660/10/10, I should like to remind you that, in accordance with the Treaty of Limits of 15 April 1858, the arbitral award issued by the President of the United States of America, Mr. Grover Cleveland, on 22 March 1888 and the Matus-Pacheco Convention of 27 March 1896, the dividing line between the Republics of Costa Rica and Nicaragua was defined and marked out in the period 1897-1900 by the Commissions of Costa Rica and Nicaragua, with the assistance of the Engineer-Arbitrator, General E. P. Alexander, appointed by the President of the United States of America pursuant to the Matus-Pacheco Convention.

In accordance with the aforementioned instruments, the work of demarcating and setting survey markers for the boundary line began on the Atlantic (Caribbean) coast at Punta de Castilla, starting at survey marker I, with the boundary line following the right-hand bank of Harbor Head Lagoon (now Portillos Lagoon) as far as the first channel met there at that time, which flowed towards the mouth of the San Juan River into the Caribbean Sea, and then continuing along the right-hand bank of the San Juan River to survey marker II, three English miles from the exterior fortifications of Castillo Viejo. The dividing line then continues along a series of parallel lines from survey marker II to survey marker XX at Salinas Bay.

As I am sure you are aware, the demarcation of, and setting of survey markers for, the boundary line between the Republics of Costa Rica and Nicaragua is described verbally and illustrated graphically by means of tables of geodetic operations and plans throughout the 27 Acts of Proceedings signed by the Commissions of Limits of Nicaragua and Costa Rica and the Arbitrator, General E. P. Alexander, and five Awards signed by General Alexander; these historical documents are commonly known as the Alexander Acts. In Act of Proceedings No. XXVII of 24 July 1900, the proceedings were completed and all the operations

that had begun in May 1897 on the demarcation of the boundary line between the two Republics were concluded, with the following agreement:

> "1st. The boundary line between Nicaragua and Costa Rica is hereby definitely demarcated, from the starting point on the Atlantic Ocean, in Punta de Castilla, at the place designated by the Arbitrator's Award No. I, and continues on the right hand shore of Harbor Head, and follows the right hand bank of the first channel met, and continues by that of the San Juan River, to a point that is three English miles distant from the exterior fortifications of Castillo Viejo: all this in accordance with the geodetic operations and plans that are seen on the corresponding Acts of Proceedings. Then, it continues around Castillo, as it was recorded on the respective Act of Proceedings, then follows the parallel line to the river and lake, with the calculated distance, also recorded in the Acts of Proceedings. It comes to a point on the Sapoa river, that is two miles distant from the lake, and follows the Astronomical line as far as the shore of the Salinas Bay, towards the central point of the same bay, with the mathematical position shown in the plans. This demarcation work is written out in three books, of two volumes each one; two of the books are in Spanish, and one in English, signed and sealed in accordance with the Matus-Pacheco Treaty. The books in Spanish will be delivered one to each of the Governments of the said two Republics, Nicaragua and Costa Rica, and the third one, written in English will be delivered to the United States Government by the Arbitrator. [2nd.] This demarcation ends all questions that, on account of indefinite boundary lines, have had heretofore, between them the Republics of Nicaragua and Costa Rica."

With specific reference to the area currently of interest (Punta de Castilla-mouth of the San Juan River-Finca Aragón), the demarcation of the boundary line between the Republics of Costa Rica and Nicaragua, as represented on the official 1:50,000-scale maps of both countries, fully corresponds to the verbal description, supported by tables and plans, contained in the Alexander Acts. This is easily confirmed by reference to the topographical map Punta Castilla 3448 I, Edition 2-IGNCR, 1988, 1:50,000 scale, produced by the National Geographical Institute of Costa Rica, and the topographical map San Juan del Norte 3448 I, 1988 updated version, 1:50,000 scale, produced by the Nicaraguan Institute of Territorial Studies (INETER).

There can therefore be no doubt whatsoever that the actions denounced by Costa Rica in its note DM-412-10 of 21 October 2010, a complaint supported by the photographic and audio-visual evidence in my country's possession, took place in Costa Rican territory. In particular, it is clear that the problem did not arise from a lack of boundary marking or a lack of clarity regarding the boundary line in this area, since the official maps of both countries, as well as the instruments governing the matter — in particular the Alexander Acts — allow no room for error.

In connection with the above, Costa Rica categorically rejects the claim made in note MRE/DVM/AJST/660/10/10 of 26 October 2010, which refers to "repeated violations of Nicaraguan territory by troops of the Costa Rica armed forces", firstly, because Costa Rica abolished its armed forces when it promulgated its 1949 Political Constitution, as is well known by the whole international community, and secondly, because the actions undertaken by the security forces of Costa Rica in the area have been carried out entirely within its national territory.

Furthermore, in consideration of the matter at hand, I should like to remind you that the execution of works in the San Juan River must not damage Costa Rican territory, including by reducing the water level of its rivers, or affect Costa Rican navigation in the San Juan River. This is clearly established in article 3, paragraph 6, of the 1888 Cleveland Award, the terms of which were ratified by the International Court of Justice in its recent Judgment of 13 July 2009. The said paragraph 6 provides as follows:

> "6. The Republic of Costa Rica cannot prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, *provided* such works of improvement do not result in the occupation or flooding or damage of Costa Rica territory or in the destruction or serious impairment of the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same. (...)".

Given this situation, the Government of Costa Rica considers that, for the purposes of maintaining the good neighbourly relations sought by two sister countries linked by geography and history and committed to dialogue, good faith and respect for international law, the matter of the dredging of the San Juan River should be included as an item on the agenda of the next binational meeting, a mechanism created precisely for the discussion of matters of the utmost interest to both countries, as this matter clearly is. Costa Rica proposes that the next such meeting be held on 27 November 2010 in the city of Liberia. Consideration may also be given to the inclusion of other relevant items on the agenda.

The Government of Costa Rica considers it necessary that the said dredging operations be suspended in order to demonstrate the Nicaraguan Government's good faith and commitment to a successful binational meeting.

(*Signed*) René **Castro Salazar**

Minister for Foreign Affairs and Worship

1 November 2010
DM-430-10

His Excellency Mr. Samuel Santos López
Minister for Foreign Affairs
Republic of Nicaragua

I have the honour to inform you that the Government of Costa Rica has verified that troops of the Nicaraguan Army have entered Costa Rican territory, specifically in the area of Finca Aragón, Isla Calero, Province of Limón. This is precisely where Mr. Edén Pastora took the actions that resulted in the violation of territorial sovereignty and environmental damage, as denounced in note DM-412-10 of 21 October 2010, signed by the Deputy Minister for Foreign Affairs and Worship, Ms. Marta Núñez Madriz.

According to the information available, the Costa Rican flag that was flying in this area was removed and has been replaced by a flag of the Republic of Nicaragua. It has also been verified that Nicaraguan Army personnel have established themselves in the aforementioned area.

For the Government of Costa Rica, these actions constitute an unacceptable violation of its territorial integrity and sovereignty and are utterly indefensible on the part of Nicaragua.

In view of the above, the Government of Costa Rica, while lodging with the Nicaraguan Government the strongest protest at these actions, demands the immediate withdrawal of members of the Nicaraguan armed forces, as well as any other official of the Nicaraguan Government, from the sovereign territory of Costa Rica. If this demand is not met, the Government of Costa Rica will make use of every remedy provided for under international law to resolve this type of situation and ensure the adequate protection of its territory.

The proposal to hold a binational meeting on 27 November 2010 is of course subject to the immediate withdrawal of the Nicaraguan armed forces from the sovereign territory of Costa Rica.

(*Signed*) René **Castro Salazar**